

1 **COMP**
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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13 * * * *

14 FRED KHALILIAN, , Derivatively on Behalf of
15 Nominal Defendant, MONSTER PRODUCTS
16 INC.,

17 Plaintiff,

18 vs

19 MONSTER PRODUCTS, INC., a Nevada
20 corporation; NOEL LEE, an individual; KEVIN
21 LEE, an individual; BRUCE GIESBRECHT, an
22 individual; DOES I through X, inclusive; and
23 ROE ENTITIES XI through M, inclusive,

24 Defendants.

25 And

26 Nominal Defendant, MONSTER PRODUCTS
27 INC.,

28 **CASE NO.:**
DEPT. NO.:

**VERIFIED SHAREHOLDER
DERIVATIVE COMPLAINT (JURY
TRIAL DEMANDED)**

29 FRED KHALILIAN ("Plaintiff") is a shareholder of Monster Products, Inc. ("Monster"
30 or the "Company"), and files this Verified Shareholder Derivative Complaint (the "Complaint")
31 pursuant to Federal Rule of Civil Procedure 23.1 on behalf of the Company against certain of its
32 officers and directors seeking to remedy Defendants' violations of the law. Including breaches
33 of fiduciary duties relating to events that began as early as 2015 and continued until the present
34 day (the "Relevant Period") and that have caused substantial financial losses to Monster

1 and other damages, including, but not limited to, its reputation and goodwill. Plaintiff hereby
2 alleges upon personal knowledge as to his own acts and upon information and belief as to all
3 other matters, based upon, inter alia, an investigation, which included, among other things, the
4 review of publicly available documents filed with the United States Securities and Exchange
5 Commission ("SEC"), press releases and other media reports.

6
7 **JURISDICTION AND PARTIES**

8 1. This Court has jurisdiction over all claims asserted herein pursuant to 28 U.S.C.
9 §1331 in that plaintiffs' claims arise in part under the constitution and laws of the United States,
10 including SOX. This Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367(a). This
11 action is not a collusive action designed to confer jurisdiction on a court of the United States that
12 it would not otherwise have.

13 2. Venue is proper in this jurisdiction pursuant to 28 U.S.C. §1391(b) insofar as a
14 substantial part of the events or omissions giving rise to the claim occurred within this judicial
15 district.

16 3. Plaintiff, FRED KHALILIAN (hereinafter "KHALILIN") is a resident of the State
17 of California.

18 4. Nominal Defendant, MONSTER RODUCTS, INC., a Nevada Corporation.,
19 (hereinafter "MONSTER") is a Nevada corporation.

20 5. Defendant, Noel Lee, (hereinafter "LEE") is a resident of the State of California
21 doing business in Clark County, Nevada and an officer and director of Nominal Defendant
22 Monster.

23 6. Defendant, Kevin Lee, (hereinafter "KLEE") is a resident of the State of California
24 doing business in Clark County, Nevada and an officer and director of Nominal Defendant
25 Monster.

26 7. Defendant, Bruce Giesbrecht, (hereinafter "GIESBRECHT") is a resident of the
27 State of California doing business in Clark County, Nevada and an officer and director of Nominal
28 Defendant Monster.

8. The true names of Defendants DOES I through X, inclusive, whether individual,

1 corporate, associate or otherwise are unknown to the Plaintiff, who therefore sues each Defendant
2 by fictitious names. The Plaintiff is informed and thereupon allege that each of the Defendants
3 designated herein as DOE is in some way responsible for the damages claimed by the Plaintiff
4 herein. The Plaintiff will ask leave of this Court to amend this Complaint to insert the true names
5 and capacities of Defendants DOES I through X, inclusive, when the identities have been
6 ascertained, to formulate appropriate allegations, and to join such Defendants in this action.

7 9. Upon information and belief, at all times relevant hereto, each of the Defendants
8 set forth herein was the principal, agent, employee, employer or co-conspirator of each other, and
9 at all relevant times were acting within the course and scope of such relationships.

10 10. Plaintiff is informed and believes that at all times relevant hereto, Defendants
11 Monster and Lee were principals, owners, and managers of each other Defendants, and treated
12 each other Defendant and its finances as a mere shell, instrumentality, and conduit through which
13 each other Defendant carried on business in name only, exercising control and dominance of such
14 each other business to such an extent that any individuality or separateness of each other.
15 Defendant did not exist, and to maintain the fiction of a separate business entity would promote
16 fraud and sanction injustice, such that each other Defendant should be treated as the alter egos of
17 one another.

18 **GENERAL ALLEGATIONS**

19 11. The Plaintiff repeats and re-alleges each and every allegation contained in the
20 foregoing paragraphs as if fully set forth at this time.

21 12. Defendant Lee is an officer and director of nominal Defendant Monster.

22 13. Beginning in 2015 and through the present, Defendant Lee, KLEE and
23 GIESBRECHT along with other former officers have used millions of dollars of Monsters funds
24 for his own personal use, benefit and enjoyment, including cash, jewelry, cars, travel,
25 companionship and numerous other personal items to the detriment of Monster and its
26 shareholders.

27 14. Not only have these actions drained Monster of valuable assets but also they are
28 believed to have slowed down the process of public reporting following the transaction between
various Monster entities and Atlantic Acquisition, Inc. (now Monster Products, Inc.) in 2018.

1 information with regard to the Company's financial results and timely required filings.

2 23. To discharge their duties, Defendants were required to exercise reasonable and
3 prudent supervision over management, and the Company's policies, practices and financial
4 controls. By virtue of such duties, Defendants were required to, among other things:

5 (a) Ensure that an adequate system of internal controls was in place such that

6 Monster complied with applicable laws and financial results were reported timely
7 accurately;

8 (b) Ensure that the Company had adequate corporate checks in place to ensure
9 the Company was in compliance with its legal obligations and requirements, including acting
10 only within the scope of its legal authority and disseminating required truthful and accurate
11 statements to the SEC and the investing public;

12 (c) Ensure that management was conducting the affairs of the Company in an
13 efficient, business-like manner to make it possible to provide the highest quality performance of
14 its business, and to maximize the value of the Company's stock; and

15 (d) Remain informed as to how Monster conducted its operations, and, upon
16 receipt of notice or information of imprudent or unsound conditions or practices, to make
17 reasonable inquiry in connection therewith, and to take steps to correct such conditions or
18 practices and make such disclosures as necessary to comply with federal and state securities law.

19 24. Defendants' conduct complained of herein involves a reckless and/or knowing
20 violation of their obligations as directors and officers of Monster, the absence of good faith on
21 their part, and a reckless disregard for their duties to the Company and its shareholders that
22 Defendants were aware or should have been aware posed a risk of serious injury to the
23 Company.

24 25. Defendants breached their fiduciary duties by failing to implement an adequate
25 system of internal controls, which failure caused the Company to either not make filings at all or
26 misrepresent its financial condition.

27 26. During all times relevant hereto, Defendants breached their fiduciary duties to
28 Monster's shareholders by failing to prevent financial statements from being issued that
misrepresented to the investing public, including shareholders of Monster, the Company's actual

1 financial results or not making required filings at all.

2 27. Moreover, these actions have irreparably damaged Monster's corporate image and
3 goodwill. For at least the foreseeable future, Monster will suffer from what is known as the "liar's
4 discount," a term applied to the stocks of companies implicated in illegal behavior and that
5 misled the investing public, such that Monster's ability to raise equity capital or debt on favorable
6 terms in the future is now impaired.

7 **COUNT I**

8 **Against All Defendants for Breach of Fiduciary Duty in Connection with their**
9 **Management of Monster**

10 28. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if
11 fully set forth herein.

12 29. As alleged in detail herein, each of the Defendants had a duty to, inter alia, exercise
13 good faith to ensure that the Company was operated in a diligent, honest and prudent manner and,
14 when placed on notice of improper or imprudent conduct by the Company and/or its employees,
15 exercise good faith in taking action to correct the misconduct and prevent its recurrence.

16 30. As alleged in detail herein, Defendants knew or should have known of
17 Defendants' misuse of funds and failure to file required reports and they failed to remedy this
18 conduct, which has caused disastrous consequences for the Company and its stockholders. Thus,
19 Defendants breached their fiduciary duties of loyalty and good faith.

20 31. All of the Defendants willfully ignored the obvious and pervasive problems with
21 Monster's accounting and internal control practices and procedures and made no true effort to
22 correct the problems or prevent their recurrence. Thus, Defendants abdicated their fiduciary duty
23 of good faith, which could not have been the exercise of valid business judgment.

24 32. As a direct and proximate result of Defendants' foregoing breaches of fiduciary
25 duties, the Company has suffered significant damages, as alleged herein.

26 **COUNT II**

27 **Against All Defendants for Breach of Fiduciary Duty for Disseminating False Information**
28 **to Monster Shareholders**

33. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if

1 fully set forth herein.

2 34. As alleged in detail herein, each of the Defendants had a duty to ensure that
3 Monster disseminated accurate, truthful and complete information to the shareholders.

4 35. Each of the Defendants violated the fiduciary duties of care, loyalty, and good
5 faith by causing or allowing the Company to disseminate to the shareholders materially
6 misleading and inaccurate information through public statements, including, but not limited to,
7 SEC filings, as described herein.

8 36. Additionally, each of the Defendants failed to correct the Company's publicly
9 Report, financial results and guidance. These actions could not have been a good faith exercise
10 of prudent business judgment to protect and promote the Company's corporate interests.

11 37. As a direct and proximate result of Defendants' foregoing breaches of fiduciary
12 duties, the Company has suffered significant damages, as alleged herein.

13 **COUNT III**

14 **Against All Defendants for Breach of Fiduciary Duty for Failing to Design and**
15 **Implement Adequate Internal Controls**

16 38. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if
17 fully set forth herein.

18 39. As alleged herein, each of the Defendants had a duty to Monster and its
19 stockholders to design and implement adequate internal controls, including accounting controls.
20 Further, each of the Defendants were required to ensure the Company's financial results were
21 recorded in compliance with GAAP and SEC rules and regulations.

22 40. Although Defendants repeatedly told shareholders that they had complied with
23 their fiduciary duties in this regard, those statements were untrue. The Company lacked the most
24 basic internal controls which could have prevented the misuse of funds (or, detected it sooner)
25 and the resulting material negative impact on the Company's financial statements.

26 41. Thus, notwithstanding their statements to the contrary, Defendants abdicated their
27 responsibility to establish and maintain adequate internal controls at Monster, having made no
28 good faith effort to fulfill their fiduciary duties.

42. As a direct and proximate result of the Defendants' foregoing breaches of

1 fiduciary duties, the Company has suffered significant damages, as alleged herein.

2 **COUNT IV**

3 **Against All Defendants for Unjust Enrichment**

4 43. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if
5 set forth fully herein.

6 44. Defendants were unjustly enriched by their receipt and retention of corporate funds
7 and property as alleged herein, and it would be unconscionable to allow them to retain the benefits
8 thereof

9 45. To remedy Defendants' unjust enrichment, the Court should order them to
10 disgorge to the Company all of the corporate funds and property they improperly they received.

11 **COUNT V**

12 **Against the Officer Defendants for Breach of Fiduciary Duty and Unjust**
13 **Enrichment Related to the Salaries, Bonuses and any Other Incentive Compensation They**
14 **Received During the Relevant Period**

15 46. Plaintiff incorporates by reference and realleges each and every allegation set
16 forth above, as though fully set forth herein.

17 47. The Officer Defendants received corporate funds and property improperly.

18 48. Because the Officer Defendants received corporate funds and property improperly,
19 the Company's financial statements were materially misleading at the time they were issued. As
20 a result, the Company's financial performance was materially overstated at all times relevant
21 hereto, and because these defendants received financial benefits based on the Company's false
22 financial performance, they were unjustly enriched at the Company's expense. Thus, it would be
23 unconscionable to allow them to retain the benefits of their improper conduct.

24 49. To remedy the Officer Defendants' unjust enrichment, the Court should order
25 them to disgorge to the Company all other monetary benefits they received during the Relevant
26 Period.

27 **COUNT VI**

28 **Against All Defendants for Violation of §10(b) and Rule 10b-5 of the Exchange Act**

50. Plaintiff incorporates by reference and realleges each and every allegation set

1 forth above, as though fully set forth herein.

2 51. Throughout the Relevant Period, Defendants individually and in concert, directly
3 and indirectly, by the use and means of instrumentalities of interstate commerce and/or of the
4 mails, engaged and participated in a continuous course of conduct which allowed them to receive
5 improper payments, property and funds and make no recompense to the Company.

6 52. Defendants employed devices, schemes, and artifices to defraud while in
7 possession of material, adverse non-public information and engaged in acts, practices, and a
8 course of conduct that included the making of, or participation in the making of, untrue and/or
9 misleading statements of material facts and/or omitting to state material facts necessary in order
10 to make the statements made about Monster not misleading.

11 53. Defendants, as top executive officers and directors of the Company, are liable as
12 direct participants in the wrongs complained of herein. Through their positions of control and
13 authority as officers of the Company, each of the Defendants was able to and did control the
14 conduct complained of herein and the content of the public statements disseminated by the
15 Company.

16 54. Defendants acted with scienter throughout the Relevant Period, in that they either
17 had actual knowledge of the misrepresentations and/or omissions of material facts set forth
18 herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose
19 the true facts, even though such facts were available to them. Defendants were among the senior
20 management of the Company, and were therefore directly responsible for the false and
21 misleading statements and/or omissions disseminated to the public through press releases, news
22 reports, and filings with the SEC.

23 55. Each of the Defendants participated in a scheme to defraud with the purpose and
24 effect of defrauding Monster.

25 56. By virtue of the foregoing, Defendants have violated §10(b) of the Exchange Act
26 and Rule 10b-5 promulgated thereunder.

27 **WHEREFORE**, Plaintiff demands judgment as follows:

28 A. Directing Defendants to account to Monster for all damages sustained
or to be sustained by the Company by reason of the wrongs alleged herein;

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B. Directing Monster to take all necessary actions to reform its corporate governance and internal procedures to comply with applicable laws and protect the Company and its shareholders from a recurrence of the events described herein, including, but not limited to, a shareholder vote resolution for amendments to Monster's By-Laws or Articles of Incorporation and taking such other action as may be necessary to place before shareholders for a vote on corporate governance policies;

C. Awarding to Monster restitution from the Defendants and ordering disgorgement of all profits, benefits and other compensation obtained by the Individual Defendants.

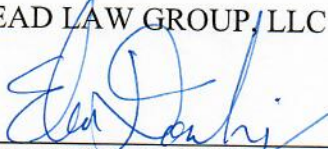
D. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and experts' fees and expenses; and

E. Granting such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED this 14TH day of May, 2019.

EAD LAW GROUP, LLC


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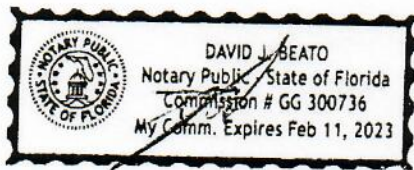
VERIFICATION

STATE OF ~~NEVADA~~ Florida)
) ss.
COUNTY OF ~~CLARK~~ Miami-Dade)

FRED KHALILIAN , bring first duly sworn, deposes and says:

That I am the Plaintiff in the above-entitled action; that I have read the foregoing document and know the contents thereof; the same is true of my own knowledge except as to those matters therein stated on information and belief and, as to those matters, I believe them to be true.

Fred Khalilian
FRED KHALILIAN



SIGNED and SWORN to before me on the
14 day of May, 2019.

[Signature]
NOTARY PUBLIC